

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**CHRISTINA D. DUMAL, Appellant**

**and**

**DEPARTMENT OF AGRICULTURE,  
FOOD SAFETY & INSPECTION SERVICE,  
Morton, MS, Employer**

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**Docket No. 05-1525  
Issued: September 21, 2005**

*Appearances:*  
*Christina D. Dumal, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
WILLIE T.C. THOMAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 11, 2005 appellant filed a timely appeal from the March 2, 2005 merit decision of the Office of Workers' Compensation Programs, which suspended her compensation for refusing to submit to a medical examination. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the suspension.<sup>1</sup>

**ISSUE**

The issue is whether the Office properly suspended appellant's compensation under 5 U.S.C. § 8123(d) for refusing to submit to a medical examination.

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<sup>1</sup> Appellant did not appeal the Office's June 29, 2005 decision denying her request for a hearing or the Office's August 12, 2004 decision denying continuation of pay.

## **FACTUAL HISTORY**

On or about June 8, 2004 appellant, then a 49-year-old veterinarian, filed a claim alleging that she sustained a left wrist injury on May 17, 2004 while in the performance of duty. She was diagnosed with severe tendinitis of the left forearm and hand. The Office accepted her claim for the condition of left hand tendinitis.

On November 9, 2004 the Office referred appellant to Dr. Edward R. Turnbull, an orthopedic surgeon, for a second opinion evaluation to determine her ability to perform her job duties. The appointment was scheduled for December 1, 2004, and appellant indicated in a December 6, 2004 letter that she kept the appointment.

On January 12, 2005 the Office, through its agent, Baybrook Medical Services, notified appellant that she was scheduled to have a diagnostic study on January 27, 2005. On January 18, 2005 appellant questioned the reason for the test, as Dr. Turnbull never discussed it with her during the December 1, 2004 examination. She repeated her request for a copy of Dr. Turnbull's notes to support that he was requesting such a test stating: "I am willing to submit to any and all DOL tests but I am requesting that they be physician requested with justification and not by contract entities pretending to be DOL employees."

On January 28, 2005 the diagnostic laboratory advised the Office that appellant did not keep her scheduled appointment on January 27, 2005. On February 17, 2005 the Office notified appellant that her appointment for a diagnostic study was rescheduled for a "make up" appointment on February 25, 2005. The Office informed her of the provisions of 5 U.S.C. § 8123(d) and advised her of the following:

"You have 14 days from the date of this letter to furnish your reasons, with substantive corroborating evidence, for failing to attend the medical examination arranged by this office. At the end of the 14 days, your reasons will be reviewed. If we determine that your reasons are invalid, you will be found in obstruction of a medical examination within the meaning of 5 U.S.C. § 8123(d) as stated above, and your compensation will be suspended until the obstruction ceases. If your reasons for missing the examination are determined to be valid, we will reschedule the examination and advise you accordingly.

"Please respond within 14 days from the date of this letter."

On February 18, 2005 appellant repeated her request for evidence that Dr. Turnbull had requested the diagnostic study. She noted that the diagnostic laboratory had an improper order in January for a test of her right wrist.<sup>2</sup>

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<sup>2</sup> The evidence of record reflects that the statement of accepted facts referred to the accepted claim as a right wrist injury.

In a decision dated March 2, 2005, the Office suspended appellant's compensation under 5 U.S.C. § 8123(d) for refusing to submit to a medical examination:

“By letter dated February 17, 2005, our office directed you to report for examination by Open MRI of Jackson, scheduled for January 27, 2005 and again on February 25, 2005. Our letter also advised you of your obligation to attend and fully cooperate with an examination arranged by our office, and of the consequences for not doing so.

“You did not attend your scheduled examination. By letter dated February 17, 2005, our office gave you 14 days to provide written evidence justifying your failure to attend or cooperate with this examination.

“You have not provided an explanation of your failure to attend or cooperate.”

### **LEGAL PRECEDENT**

An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required.<sup>3</sup> If an employee refuses to submit to or obstructs an examination, his or her right to compensation is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues, and the period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee.<sup>4</sup>

To invoke this provision of the law, the Office must ensure that the claimant has been properly notified of his or her responsibilities with respect to the medical examination scheduled. Either the claims examiner or the medical management assistant may contact the physician directly and make an appointment for examination. The claimant and representative, if any, must be notified in writing of the name and address of the physician to whom he or she is being referred as well as the date and time of the appointment. The notification of the appointment must contain a warning that benefits may be suspended under 5 U.S.C. § 8123(d) for failure to report for examination. If the claimant does not report for a scheduled appointment, he or she should be asked in writing to provide an explanation within 14 days. If good cause is not established, entitlement to compensation should be suspended in accordance with 5 U.S.C. § 8123(d) until the claimant reports for examination.<sup>5</sup>

### **ANALYSIS**

There is no evidence in the record that the diagnostic study scheduled for January 27, 2005, and then rescheduled for February 25, 2005, was “reasonably required” under 5 U.S.C.

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<sup>3</sup> 5 U.S.C. § 8123(a).

<sup>4</sup> *Id.* at § 8123(d); *see* 20 C.F.R. § 10.323 (1999).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14 (April 1993).

§ 8123(a). The record contains no request or referral from Dr. Turnbull. Indeed, the record gives no indication who requested the study or the date the request was made. There is no treatment note, letter or fax addressing the need for this diagnostic study. Appellant's January 18, 2005 letter questioning the reason for the appointment raises a valid concern for which the record provides no answer.<sup>6</sup> Because the Office did not establish that the scheduled examination was "reasonably required" under 5 U.S.C. § 8123(a), which is a condition precedent to the penalty under section 8123(d), the Board finds that the Office improperly suspended appellant's compensation.

In its February 17, 2005 letter, the Office advised appellant that she had 14 days to furnish her reasons for failing to attend the medical examination. She provided her reasons in letters dated January 18, February 2 and 18, 2005, none of which the Office addressed before suspending her compensation. The Office also suspended her compensation before the 14-day period expired. Further, the appointment scheduled for January 27, 2005 was rescheduled for February 25, 2005: If appellant kept the rescheduled appointment, there would be no basis for suspension. However, the Office suspended her compensation with no evidence that she failed to keep the rescheduled appointment.

### **CONCLUSION**

The Board finds that the Office improperly suspended appellant's compensation under 5 U.S.C. § 8123(d). The Board will reverse the March 2, 2005 decision and remand the case for reinstatement of appellant's benefits.

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<sup>6</sup> The Board's jurisdiction is limited to the evidence in the case record that was before the Office at the time of its March 2, 2005 decision. 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 2, 2005 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further action consistent with this opinion.

Issued: September 21, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board